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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

NO. 72-1225

CITY OF NEW ORLEANS, ET ALS.,
Petitioners

Versus

NEW ORLEANS FIRE FIGHTERS ASSOCIATION, LOCAL 632, ET ALS.,
Respondents

CONSOLIDATED WITH
CITY OF NEW ORLEANS, ET ALS.,
Petitioners

Versus

NEW ORLEANS FIRE FIGHTERS ASSOCIATION, LOCAL 632, ET ALS.,
Respondents

On Petition for Writ of Certiorari to the Supreme Court of Louisiana

BRIEF FOR RESPONDENTS IN OPPOSITION

OF COUNSEL
DODD, HIRSCH, BARKER, MEUNIER,
BOUDREAUX & LAMY

C. PAUL BARKER
JERRY L. GARDNER, JR.
MAURICE S. CAZAUBON, JR.
711 Carondelet Building
New Orleans, Louisiana 70130
Attorneys for New Orleans Fire Fighters Association Local 632 et als

INDEX

	Page
A. OPINIONS BELOW	2
B. JURISDICTION	2
C. QUESTION PRESENTED	3
D. LAWS INVOLVED	3
E. STATEMENT OF THE CASE	3
F. ARGUMENTS IN OPPOSITION TO THE GRANTING OF WRITS	4
G. CONCLUSION	6
H. CERTIFICATE	8

INDEX TO APPENDICES

Page

Louisiana Statutes Annotated,
Code of Civil Procedure Article 2167 — A-1 9

Louisiana Constitution Article 7 and 11 — B-1 10

AUTHORITIES

Cases:	Page
Dandridge v. Williams, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491	6
Leavenworth County Commissioners v. Sellew, 99 U.S. 624, 25 L.Ed. 333	6
Louisiana Civil Service League, et al v. Harold E. Forbes etc., et al., 258 La. 390, 246 So.2d 800 (1971)	4
Newark v. New Jersey, 262 U.S. 192, 43 S.Ct. 530, 67 L.Ed. 943 (1923)	5
New Orleans Fire Fighters Assn. et al vs. City of New Orleans et al, 230 So.2d 326, writs den. 255 La. 557, 232 So.2d 78 on the merits (1970)	5
New Orleans Fire Fighters Assn. et al v. City of New Orleans et al 260 So.2d 779 (on contempt) (1972)	2
New Orleans Fire Fighters Assn. et al v. City of New Orleans et al, 269 So.2d 194 (La.S.Ct. 1972)	5
Williams v. Eggleston, 170 U.S. 304, 18 S.Ct. 617, 42 L.Ed. 1047 (1898)	5
Williams v. Mayor and City Council, 289 U.S. 36, 53 S.Ct. 431, 77 L.Ed. 1015 (1933)	5
Wilson v. United States, 221 U.S. 361, 31 S.Ct. 538, 55 L.Ed. 771	6
Statutes:	
United States Constitution, 14th Amendment	3, 6
Louisiana Constitution of 1921, Article 7 and 11	4
Louisiana Statutes Annotated, Code of Civil Procedure Article 2167	4

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BRIEF FOR RESPONDENTS IN OPPOSITION

TO THE HONORABLE, THE SUPREME COURT OF THE UNITED STATES OF AMERICA AND THE CHIEF JUSTICE AND ASSOCIATE JUSTICES THEREOF:

Respondents, New Orleans Fire Fighters Association, Local 632, et al, hereinafter referred to as "Fire Fighters", file this Brief for Respondents in Opposition to the Petition for Certiorari filed in this Court by the City of New

Orleans. Petitioner's petition for certiorari was received by Respondents on Thursday, March 8, 1973. Respondents In Opposition respectfully aver as follows:

A.

OPINIONS BELOW

The opinions and decrees in this matter are stated below with a list of the important dates:

Proceeding	Reported at	Date
Original Judgment of Civil District Court, Parish of Orleans on Mandamus Action	Not reported (See Petitioner's Appendix C-1, D-1, E-1, F-1)	July 11, 1969
Decision of Fourth Circuit Court of Appeals on Mandamus Action	230 So.2d 326	Jan. 12, 1970
Denial of Writs by Louisiana Supreme Court on Mandamus Action (Petition for Writs filed by City of N. O.)	255 La. 557, 232 So.2d 78	Mar. 12, 1970
Judgment of Civil District Court, Parish of Orleans on Rule for Contempt	Not reported (See Petitioner's Appendix G-1, H-1, I-1, J-1)	Nov. 27, 1970
Decision of Fourth Circuit Court of Appeal on Contempt Rule	260 So.2d 779	Apr. 4, 1972
Judgment granting Writs of Certiorari by Louisiana Supreme Court	262 La. 452, 263 So.2d 721 and 262 La. 453, 263 So.2d 722	June 29, 1972
Judgment of Louisiana Supreme Court on Contempt	La. 269 So.2d 194 (See Petitioner's Appendix K-1)	Nov. 6, 1972

B.

JURISDICTION

Respondents question the jurisdiction as alleged by Petitioners on the grounds that no federal question exists and no title, right, privilege or immunity is granted to Petitioners under the Constitution.

C.

QUESTION PRESENTED

The question presented for review is not stated correctly by Petitioner. The Statement of the Case, the Argument and the cases relied upon by Petitioners in fact indicate the question is as follows:

Is a final judgment of mandamus of the highest Courts of Louisiana against the City of New Orleans commanding the City and its officials to comply with Legislative Acts granting special pay and minimum wages to a special class of employees (Fire Fighters) enforceable by a contempt action or is such enforcement violative of the municipality's and its officers' rights to due process and equal protection under the 14th Amendment?

D.

LAWS INVOLVED

Petitioners set forth no Constitutional Provision or Statute of the United States which is involved in this matter and, in fact, there are none. The only laws involved are set forth by Petitioners.

E.

STATEMENT OF THE CASE

The Statement of the Case by Petitioners is substantially correct except that the judgment rendered by the Fourth Circuit Court of Appeals, on the merits, rehearing denied February 2, 1970, became final by the denial

of writs by the Supreme Court of Louisiana on March 12, 1970 (LSA CCP Article 2167, La. Const. Art. 7 & 11—see Appendix A-1 and B-1). Fire Fighters' rule for contempt to enforce these final judgments was granted in the court of original jurisdiction, the Civil District Court for the Parish of Orleans.

The special plea was filed by the Petitioners for the first time on October 13, 1971 in the Court of Appeal, Fourth Circuit, on appeal of the Contempt Ruling (See Appendix B attached to Petition). It was not urged in the original proceeding on the merits of the mandamus tried in July, 1969 nor in the November, 1969 argument before appeals court, nor in the original trial of the Contempt in the Civil District Court.

F.

ARGUMENTS IN OPPOSITION TO THE GRANTING OF WRITS

The questions presented and arguments made by Petitioners are incorrect statements of the holding the Courts of the State of Louisiana interpreting its Legislative Acts and Constitution. The reliance of Petitioners on *Louisiana Civil Service League, et al vs. Harold E. Forbes, etc. et al*, 258 La. 390, 246 So.2d 800 (29 March, 1971) is incorrect. The *Forbes* case interpreted Article XIV § 15 of the Louisiana Constitution as it applied to State Civil Service Employees and the Supreme Court of Louisiana specifically distinguished *Forbes* from this case; distinguishing the relationship between the employees under the City Civil Service Commission as opposed to employees under the State Civil Service Commission, and the holding in this

case on the merits. (258 La. 390, 246 So.2d 800, 809, 810). In the original decisions on the merits the Fourth Circuit Court of Appeals decided in express language that the statutes complained of are not contrary to the Louisiana Constitution. *New Orleans Fire Fighters Assn. et al vs. City of New Orleans et al*, 230 So.2d 326, writs den. 255 La. 557, 232 So.2d 78. This holding was reaffirmed by the Supreme Court of Louisiana in its ruling in the contempt proceeding, *N. O. Fire Fighters Assn. et al v. City of New Orleans, et al*, 269 So. 2d 194, 197-199.

THE COURTS OF THE STATE OF LOUISIANA HAVE NEVER RULED THE STATUTES COMPLAINED OF BY PETITIONERS TO BE IN VIOLATION OF THE LOUISIANA CONSTITUTION: THE COURTS OF LOUISIANA TWICE HAVE AFFIRMATIVELY RULED THESE STATUTES DO *NOT* VIOLATE THE LOUISIANA CONSTITUTION.

Petitioners are seeking a determination from this Court that Acts 55 and 57 of the Extra Session of 1968 (R.S. 33:1992 and 1996) are unconstitutional under the 14th Amendment. The Petitioners, City of New Orleans, is "an agency of the State for conducting the affairs of government and, as such, it is subject to the control of the Legislature." *Williams vs. Eggleston*, 170 U.S. 304, 310, 18 S.Ct. 617, 619, 42 L.Ed. 1047 (1898). The Petitioners, therefore, are guaranteed "no privileges or immunities under the Federal Constitution which it may invoke in opposition to the will of its creator." *Williams v. Mayor and City Council*, 289 U.S. 36, 40, 53 S.Ct. 431, 432, 77 L.Ed. 1015 (1933). *See also Newark vs. New Jersey*, 43 S.Ct. 530, 262 U.S. 192, 67 L.Ed. 943.

Petitioners are seeking an order from this Court to declare null Statutes of the State of Louisiana and the enforcement of a final judgment of the Courts of Louisiana final for more than ninety (90) days under the contempt powers granted to said Courts.

Petitioners seek to have this Court substitute its interpretation of Louisiana law giving longevity and minimum pay to City firemen for the interpretation of the highest Court of the State of Louisiana as contrary to rights allegedly guaranteed by the 14th Amendment. This Court has consistently held that the 14th Amendment gives the federal courts no power to impose upon the states their views of what constitutes wise economic or social policy. *Dandridge v. Williams*, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491.

This Court has held that ". . . . A command in mandamus addressed to a municipal corporation is in effect a command to those who are officially responsible for the conduct of its affairs. If an officer of a municipality fails to comply or prevents compliance . . . . the officers no less than the corporation itself are guilty of disobedience and may be punished for contempt in not carrying out what is commanded." *Wilson vs. United States*, 221 U.S.361, 31 S.Ct. 538, 55 L.Ed. 771, Ann. Cas. 1912 D; see also *Leavenworth County Commissioners vs. Sellew*, 99 U.S. 624, 25 L.Ed. 333.

G.

CONCLUSION

For the reasons stated above, it is submitted that a petition for writ of certiorari should be denied.

Respectfully submitted,

/s/ C Paul Barker
/s/ Jerry L. Gardner Jr.
/s/ Maurice S. Cazaubon Jr.

C. PAUL BARKER
JERRY L. GARDNER, JR.
MAURICE S. CAZAUBON, JR.
711 Carondelet Building
New Orleans, Louisiana 70130
Attorneys for Respondent
in Opposition

OF COUNSEL
DODD, HIRSCH, BARKER, MEUNIER,
BOUDREAUX & LAMY

H.

CERTIFICATE

/s/ cPB

I certify that ~~a copy~~ 3 copies of the above and foregoing Brief has been served upon Blake G. Arata, City Attorney, City of New Orleans by hand this 21st day of March, 1973.

/s/ C Paul Barker

C. Paul Barker

APPENDIX A-1

Louisiana Statutes Annotated Code of Civil Procedure

Art. 2167. Finality of judgment

A judgment of an appellate court becomes final and executory when the delay for applying for a rehearing has expired and no application therefor has been made.

When an application for a rehearing has been applied for timely:

(1) A judgment of the supreme court becomes final and executory when this application is denied; and

(2) A judgment of a court of appeal becomes final and executory when the supreme court denies a timely application for a writ of certiorari in the case; or on the expiration of thirty days after the denial of a rehearing by the court of appeal, if no timely application has been made to the supreme court for a writ of certiorari.

APPENDIX B-1

Louisiana Constitution

ARTICLE 7

* * *

§ 11. Certiorari and other writs to courts of appeal; time; judgment of court of appeal

Section 11. It shall be competent for the Supreme Court to require by writ of certiorari, or otherwise, any case to be certified from the Courts of Appeal to it for review, with the same power and authority in the case as if it had been carried directly by appeal to the said court; provided, that where the application is based solely upon the ground that the decision of the question of law involved is in conflict with the jurisprudence of the Supreme Court or another Court of Appeal upon a question not yet decided by the Supreme Court, and it is found that such is the fact, then the application shall be granted as a matter of right; provided, however, that the Supreme Court shall in no case exercise the power conferred by this Article unless the application shall have been made to the court or to one of the justices thereof within thirty days after a rehearing shall have been refused by the Court of Appeal; and provided further, that the judgment of the Court of Appeal shall not become executory until the expiration of thirty days; or, in cases in which application is made for the writ of review, or other writs, until the decision of the Supreme Court upon the application shall have become final.

* * *